



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 11, 1995

Mr. Roger Beecham
Passman & Jones
2500 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270

OR95-763

Dear Mr. Beecham:

You represent the Dallas County Water Control and Improvement District No. 6 (the "district"), which has asked if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. The district's request was assigned ID# 33492.

The district received a request for the following information from a member of the Balch Springs City Council:

- (1) Information on how and when [the district] was created and all associated documentation. . . .
- (2) Information on how and when [the district] became a provider of water and wastewater services to the City of Balch Springs
- (3) 1993/94 and 1994/95 actual detailed expenditure reports associated with any expenditures by [the district] during fiscal year 93/94 and current expenditures for fiscal year 94/95.
- (4) List of bonds, certificates of deposit, money market accounts, and all other interest bearing accounts. . . .

We note initially that a governmental body may ordinarily transfer information to another governmental body without violating the confidentiality of the information or waiving exceptions to disclosure. See Attorney General Opinions H-917 (1976) at 1; H-242

(1974) at 4. Thus the district could provide information to the City of Balch Springs ("the city") without it being a public disclosure.

However, you assert that the information responsive to this request is excepted from disclosure to the requestor pursuant to section 552.103(a). You state that the city has a pending application with the Texas Natural Resources and Conservation Commission ("TNRCC") for a certificate of convenience and necessity to supply utility services, and also to cancel any other certificates that would conflict with the city's application. This, you explain, would bring into question the district's certificate. You contend that the district reasonably anticipates litigation on the basis of the city's pending application, and that the documents at issue are related to that litigation.

To show that section 552.103(a) is applicable, a governmental body must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have shown that litigation is reasonably anticipated.

However, you may not withhold most of the documents submitted to this office. You submitted to this office "representative samples" of the information you contend is excepted from disclosure. When samples of documents are submitted to this office, we assume they are truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative samples, but if each record contains substantially different information then all must be submitted). Based on the samples of documents provided, it appears that most of the documents at issue may not be withheld.

Your samples of documents include the district's certificate of convenience and necessity to provide utility service, issued from the Public Utility Commission; minutes from public meetings/hearings; copies of orders adopted at public meetings; audit reports adopted at public meetings; an agreement that appears to have been approved at a public meeting; and letters between the district from its attorneys concerning its enabling legislation.¹ Most of the documents you submitted, including the minutes of public meetings and the agreement, orders, and audits adopted at public meetings, are public documents that may not be withheld from disclosure under section 552.103(a). See Open Records Decision No. 221 (1979).

In Open Records Decision No. 221 (1979) at 1, this office stated:

¹Several of the letters were unreadable. We did not review, and do not address those that we marked as "unreadable." We also note that there was a handwritten notice of a community meeting that we assume was an attachment to one of the letters.

It is clear that official records of the public proceedings of a governmental body are among the most open of records, and this office has specifically held minutes of [a governmental body] to be public under the Open Records Act We doubt that the [section 552.103(a)] exception could ever be applied to except these records.

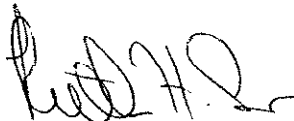
See also Gov't Code § 552.022 (listing types of information that are generally public). Therefore, if the samples submitted to this office are truly representative of the information, most of the documents are public and may not be withheld from disclosure.

As to the certificate of convenience and necessity under which the city has been receiving service from the district, it may not be withheld from disclosure if it was adopted or approved at a public meeting so as to be part of the public record. *See* Open Records Decision No. 221 (1979). We note that city may have already had access to the certificate anyway. The city receives utility service from the district based on the certificate, and apparently is seeking cancellation of the certificate. Generally, once information has been obtained or seen by all of the parties to litigation, no section 552.103 interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2.

The letters between the district and its attorneys concerning enabling legislation may be withheld from disclosure under section 552.103(a). The letters that we were able to read appear to be related to the subject of the anticipated litigation. We note that the applicability of section 552.103 ends once the litigation has concluded, and we assume that the documents at issue have not already been seen by the city. *See* Attorney General Opinion MW-575 (1982) at 2; Open Records Decisions Nos. 350 (1982) at 3, 349 (1982) at 2. You may not withhold from disclosure documents the city has had access to.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/KHG/rho

Ref.: ID# 33492

Enclosures: Submitted documents

cc: Ms. Nancy Sikes
Council member
City of Balch Springs
3117 Hickory Tree Rd.
Balch Springs, Texas 75180
(w/o enclosures)